

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7013
BILL NUMBER: HB 1562

NOTE PREPARED: Jan 13, 2007
BILL AMENDED:

SUBJECT: Credit Time.

FIRST AUTHOR: Rep. Crawford
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill allows an inmate who has been deprived of at least 30 days of earned credit time to file a petition for judicial review of the decision with a court that has jurisdiction in the county in which the inmate is located if the inmate has exhausted all administrative remedies available to the inmate.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Background* – Earned credit time refers to any days that are subtracted from an offender's term of incarceration. Offenders are placed in one of three credit classes based on their conduct in the facilities where they are housed. Credit time refers to the number of days of incarceration that are removed from an offender's sentence for each day they are in the designated credit class.

<u>Credit Class</u>	<u>Credit Time</u>
Class I	One day credit time for each day in Class I
Class II	One day credit time for two days in Class II
Class III	No credit time

All offenders are initially placed in Credit Class I. They may be reassigned to Class II or III if they violate any rule of the penal facility, the Department of Correction (DOC), or the community transition program. Offenders can also acquire more credit time by successfully completing educational, vocational, and

substance abuse treatment programs.

Offenders can lose their earned credit time if they violate rules of conduct. When they violate rules of conduct, they are reassigned to a lower credit time class. Currently, if the offender feels that their constitutional rights have been violated, they can petition the superintendent of the facility or the sheriff of the jail and then the central office of the Indiana Department of Correction. Offenders not prevailing can then file a petition for habeas corpus in federal district court. As proposed, this bill would permit an offender who has been deprived of at least 30 days of earned credit time to file for a judicial review in the court in the county that an offender is currently located.

The federal court receives the petitions of these cases and screens the cases to determine whether a constitutional interest exists. The Office of the Attorney General (AG) is required to respond to the cases that it has screened. The AG's office reports that it has been required to respond to 235 filings in CY 2006.

As proposed, this bill would allow an offender to file a petition to review the decision to deprive them of time cuts from their sentence with the court in the county in which the offender is located. Consequently, counties most likely affected by this bill would have the largest offender populations.

Explanation of State Revenues:

Explanation of Local Expenditures: The added workload to the courts would depend on how much evidence needs to be presented for the court to accept the case for judicial review or deny the petition for review. Under federal procedure, offenders have the burden of proof to demonstrate that their due process rights have been harmed. Due process rights generally include adequate notice of a meeting (usually 24 hours) and access to any written materials prepared that describe what the offender did.

Federal courts only review for "some evidence" that an offender received written notice about the hearing within 24 hours and was entitled to a written statement of findings. A higher level of proof is for the courts to decide that a preponderance of evidence existed to deny the petition to restore the credit time. If the court uses the preponderance of evidence standard instead of "some evidence", then it is likely that the courts would need to spend additional time reviewing the petition and possibly conducting hearings.

As an illustration of what effect 250 petitions for review might have on the workload of the courts, LSA used the "miscellaneous criminal" and "criminal misdemeanor" categories the *Weighted Caseload Study*, published by the Division of State Court Administration. In order to demonstrate the added workload these cases might have on a single court, miscellaneous criminal cases take 18 minutes of court time. Criminal misdemeanors take 40 minutes. Using the weighted caseload methodology to project the added workload, these additional filings would take roughly 5% of the total time that a court would have available in the course of a year if the reviews would take 18 minutes, and the additional filings would take 12% of the total time of a court if the length of review took about the same amount of time as a criminal misdemeanor.

The following table shows the counties that would most likely to be affected by this bill. DOC has adult facilities in 16 counties. There are also 69 other counties with between 1 and 69 offenders in their county jails on December 1, 2006. The utilization rate represents a measure of the workload of the trial courts in each county. The higher the utilization rate means the higher the total workload for the courts in each county. The average utilization rate for all courts in the state is 1.24.

Counties with 100 or more DOC Offenders and Utilization Rate of Trial Courts DOC Population on December 1, 2006				
<u>County</u>	<u>County Jail Population</u>	<u>DOC Facility Population</u>	<u>Total Offender Population</u>	<u>Utilization Rate</u>
LaPorte	8	5,441	5449	1.5
Madison	1	3,291	3292	1.4
Miami	2	3,086	3088	1.56
Hendricks	26	2,406	2432	1.53
Putnam	35	2,373	2408	1.61
Sullivan	0	1,986	1986	.64
Perry	9	1,300	1309	1.65
Parke	8	1,140	1148	1.29
Henry	22	1048	1070	.94
Marion	40	879	919	1.14
Jefferson	4	307	311	1.5
Johnson	24	233	257	1.32
Clark	33	187	220	1.65
Noble	54	133	187	1.06
Jasper	1	141	142	1.21
St. Joseph	36	97	133	1.37
Tippecanoe	107	0	107	1.7

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts in 85 counties have DOC offenders in either county jails, DOC facilities, or both.

Information Sources: Department of Correction; Office of the Attorney General; *2005 Indiana Judicial Service Report*.

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